

UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF THE UNITED STATES TRUSTEE
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	CASE NO.
	§	
PREFERRED READY-MIX LLC	§	21-33369 (JPN)
	§	(Chapter 11)
DEBTOR	§	
	§	
	§	
	§	
	§	
UNITED STATES TRUSTEE	§	
FOR REGION 7	§	
	§	
Movant,	§	
	§	
v.	§	
	§	
JESSICA LEE HOFF	§	
and	§	
HOFF LAW OFFICES PC	§	
	§	
Respondents	§	
	§	

**MOTION OF THE UNITED STATES TRUSTEE TO HOLD RESPONDENTS
IN CIVIL CONTEMPT AND TO IMPOSE ADDITIONAL SANCTIONS**

BLR 9013 NOTICE: THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

THERE WILL BE A HEARING ON THIS MOTION ON THURSDAY, APRIL 22, 2022 AT 11:00 AM (HOUSTON TIME) IN THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF TEXAS, COURTROOM 403, 515 RUSK, HOUSTON, TX 77002.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

TO THE HONORABLE JEFFREY P. NORMAN
UNITED STATES BANKRUPTCY JUDGE:

Kevin M. Epstein, the United States Trustee for Region 7 (“U.S. Trustee”) moves this Court under 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 9014 and 9020 to hold Respondents in civil contempt and to impose additional sanctions against Respondents as the Court deems just and proper under the circumstances, and represents as follows:

I. Preliminary Statement

On January 12, 2022, the Court entered the *Order and Referral to Chief Judge of the United States District Court for Attorney Discipline* (the “Sanctions Order”). See Dkt. No. 52. The U.S. Trustee seeks a finding of civil contempt and imposition of additional sanctions because the Respondents to date have failed to comply with the Sanctions Order.

II. Jurisdiction, Venue & Constitutional Authority to Enter a Final Order

1. The Court has jurisdiction to consider this matter under 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A). Venue is proper in this district under 28 U.S.C. § 1408.

2. The Court has constitutional authority to enter a final order in this matter. If it is determined that the bankruptcy judge does not have the constitutional authority to enter a final order or judgment in this matter, the U.S. Trustee consents to the entry of a final order or judgment by this Court in this matter.

3. Kevin M. Epstein is the duly appointed U.S. Trustee for Region 7 under 28 U.S.C. § 581(a)(7).

4. Pursuant to 11 U.S.C. § 307, the U.S. Trustee has standing to raise, appear and be heard on any issue in a case or proceeding under the Bankruptcy Code.

5. Pursuant to 28 U.S.C. § 586(a)(3), the U.S. Trustee is statutorily obligated to monitor the administration of cases commenced under the Bankruptcy Code, 11 U.S.C. § 101 *et seq.* Specifically, the U.S. Trustee is charged with a number of supervisory responsibilities in reorganization bankruptcy cases under chapter 11 of the Bankruptcy Code, including monitoring the progress of such cases and taking such actions as the U.S. Trustee deems to be appropriate to prevent undue delay in such progress. 28 U.S.C. § 586(a)(3)(G).

III. Factual Background

6. On October 14, 2021 (“Petition Date”), the Debtor filed a petition seeking relief under chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtor has operated as a debtor in possession. No trustee or examiner has been appointed in these chapter 11 cases.

7. On November 19, 2021, the U.S. Trustee filed the *Motion of the United States Trustee to (1) Examine Debtor’s Transactions with Attorney; (2) Cancel Debtor’s Agreement with Attorney; (3) Disallow and Order Disgorgement of Excessive Fees; and (4) Impose Sanction Against Attorney* (the “Enforcement Motion”). See Dkt. No. 13.

8. On January 12, 2022, the Court entered the Sanctions Order after an evidentiary hearing. *See* Dkt. No. 52. The Court found the Debtor received inconsequential or no benefit from the \$20,000.00 paid to Respondents for legal services in connection with this chapter 11 bankruptcy case. *Id.* at p. 5. Further, the Court ordered:

Attorney Jessica Lee Hoff and Hoff Law Offices PC shall return the sum of \$20,000.00 to the debtor on or before ten (10) days of the date of entry of this Order. This is a disgorgement order of the pre-petition retainer she received, failed to properly disclose and has not earned.

Any agreements between Hoff and the Debtor Preferred Ready-Mix LLC are canceled.

Monetary sanctions of \$9,000 payable to the debtor are imposed on Respondent, Jessica Lee Hoff and Hoff Law Offices PC. Said sum to be paid on or before 60 days from the date this order becomes final.

Respondent, Jessica Lee Hoff may not file or appear in any case before this Judge for a period of 2 years or until the sanction award above is paid, whichever event occurs later.

The Court refers this matter to the Chief Judge of the District Court of Southern District of Texas with a copy to the Clerk of Court for further discipline.

Id.

9. To date, the Respondents have failed to comply with the Sanctions Order.

IV. Argument and Authorities

A. Respondents are in Contempt of the Court's Sanctions Order

10. "The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). "The [Bankruptcy] Court . . . has the power, under § 105(a), to issue sanctions under its civil contempt power or pursuant to its equitable powers." *Sanchez v. Ameriquest Mortg. Co. (In re Sanchez)*, 372 B.R. 289, 310 (Bankr. S.D. Tex. 2007)(citing *Placid Ref. Co. v. Terrebonne Fuel & Lube, Inc. (In re*

Terrebonne Fuel & Lube, Inc.), 108 F.3d 609, 613 (5th Cir. 1997)(“The language of [§ 105] is unambiguous. Reading it under its plain meaning, we conclude that a bankruptcy court can issue any order, including a civil contempt order, necessary or appropriate to carry out the provisions of the bankruptcy code.”); *Harris v. Wash. Mut. Home Loans, Inc. (In re Harris)*, 297 B.R. 61, 70 (Bankr. N.D. Miss. 2003)(“[Section] 105 provides a bankruptcy court with statutory contempt powers, in addition to whatever inherent contempt powers the court may have.”) *aff’d*, 312 B.R. 591 (N.D. Miss. 2004).¹

11. “It is settled law that the power to punish for contempt is an inherent power of the federal courts and that it includes the power to punish violations of their own orders.” *Ingalls v. Thompson (In re Bradley)*, 588 F.3d 254, 265 (5th Cir. 2009)(quoting *United States v. Fidanian*, 465 F.2d 755, 757 (5th Cir. 1972)). That inherent power “is a necessary and integral part of the independence of the judiciary, and is absolutely essential to the performance of the duties imposed on them by law.” *Bradley* at 265 (quoting *Gompers v. Buck’s Stove & Range Co.*, 221 U.S. 418, 450, 31 S.Ct. 492, 55 L.Ed. 797 (1911)). As the Supreme Court explained, “[i]f a party can make himself the judge of the validity of the orders which have been issued, and by his own act of disobedience set them aside, then are the courts impotent, and what the Constitution now fittingly calls the ‘judicial power of the United States’ would be a mere mockery.” *Id.*

12. A bankruptcy court may hold a party in contempt if: (1) a court order was in effect; (2) that order required or prohibited certain conduct by the respondent; and (3) the respondent failed to comply with the order. *In re Bradley*, 588 F.3d at 264 (quoting *FDIC v. LeGrand*, 43 F.3d 163, 170 (5th Cir. 1995)).

¹ Bankruptcy courts lack the power to hold persons in criminal contempt. *Terrebonne Fuel*, 108 F.3d at

13. The facts here are unequivocal. The Sanctions Order is a final order. It requires that Respondents return the sum of \$20,000.00 to the Debtor no later than ten days of the date of the entry of the Sanctions Order and pay monetary sanctions of \$9,000.00 to the Debtor no later than sixty days of the date the Sanctions Order becomes final. The Respondents have failed to comply with the Sanctions Order. The Court should not countenance this willful behavior and should issue contempt sanctions against the Respondents.

B. The Court Should Use Its Inherent Authority to Issue Additional Contempt Sanctions, as the Court Deems Just and Proper under the Circumstances

14. The Court should use its inherent equitable powers to issue such other and further contempt sanctions as the Court deems appropriate under the circumstances. This could include, but are not limited to, enhancing unpaid legal fees to deter repeat behavior,² per diem fines,³ and incarceration.⁴

V. Reservation of Rights

15. The U.S. Trustee reserves the right to request an award of attorney's fees, costs and expenses incurred in connection with the filing of the Enforcement Motion and this Motion should the Court find that Respondents engaged in bad-faith conduct.

WHEREFORE, the U.S. Trustee requests that this Court enter an order:

- (1) finding the Respondents to be in civil contempt of the Sanctions Order;
- (2) issuing additional sanctions against Respondents as the Court deems just, proper and appropriate under the circumstances; and
- (3) granting such other and further relief as may be equitable and just.

614, n. 3.

² See *In re Hughes*, 360 B.R. 202, 209 (Bankr. N.D. Tex. 2007).

³ See *Ramirez v. Rodriguez (In re Ramirez)*, No. 09-70051, 2010 WL 1904270, at *11 (Bankr. S.D. Tex. May 11, 2010) (Isgur, J.).

⁴ See *In re Norris*, 192 B.R. 863, 877 (Bankr. W.D. La. 1995), *aff'd*, 114 F.3d 1182 (5th Cir. 1997).

Dated: March 8, 2022

Respectfully Submitted,

KEVIN M. EPSTEIN
UNITED STATES TRUSTEE

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon the parties listed below by United States Mail, first class, postage prepaid, ECF transmission or BNC noticing, on the 8th day of March, 2022.

/s/ Hector Duran
Hector Duran

DEBTOR:

Preferred Ready-Mix LLC
8750 Scranton Street
Houston, TX 77041

DEBTOR'S COUNSEL:

Joyce W. Lindauer, Esq. (Via Email at joyce@joycelindauer.com)
Joyce W. Lindauer Attorney, PLLC
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RESPONDENTS:

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SUBCHAPTER V TRUSTEE:

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(Via Email at adb@bymanlaw.com)

PARTIES REQUESTING NOTICE:

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